

EXHIBIT C-5

Bifurcation Order

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

 ORIGINAL

TIG INSURANCE COMPANY, a California Corporation,

Plaintiff,

vs.

GARY SMOLKER, an individual, and ALICE SMOLKER, an individual, and DOES 1-10, inclusive,

Defendants.

Case No. BC 173952

ASSIGNED TO JUDGE FRUIN -
DEPARTMENT 15

~~PROPOSED~~ ORDER FOR
BIFURCATION

Complaint Filed: July 2, 1997
Trial Date: July 31, 2000

AND RELATED CROSS-ACTIONS.

THIS MATTER came before the Court, the Honorable Richard L. Fruin, on the Court's own motion regarding bifurcation of this case pursuant to Code of Civil Procedure §598, on December 21, 1999 at 8:30 a.m. in Department 15.

Based upon the status of the pleadings, the identities of the parties, the facts of the case as alleged, and the comments of counsel, the Court finds, pursuant to Code of Civil

1 Procedure §598, that the ends of justice, and the economy and efficiency of handling the
2 litigation will be promoted by an order bifurcating the case.

3
4 THEREFORE, IT IS ORDERED:

5
6 **ORDERS REGARDING BIFURCATION**

7 1. The issues in the Cross-Complaints against W.R. Grace & Co. and Grace
8 Davison, Home Savings Termite Control, Inc., Wayne F. Morris, Rikk Thompson, and the
9 Pacific Villas Homeowners Association are hereby bifurcated from the remainder of this
10 action. For convenience, the issues involving these parties shall be called "the First Phase."

11 2. The First Phase shall be scheduled for trial on July 31, 2000, at 9:00 a.m., in
12 Department 15. The Final Status Conference shall take place on July 21, 2000 at 8:30 a.m.
13 in Department 15. All documents required to be filed in advance of the Final Status
14 Conference shall be filed and served no later than July 17, 2000.

15 3. The issues in the Complaint and Cross-Complaints against all other parties,
16 namely, TIG Insurance Company, Coregis Group, Inc., Coregis Insurance Company,
17 California Insurance Company, Reliance Insurance Company, Truck Insurance Exchange, and
18 the Interinsurance Exchange of the Automobile Club, called "the Second Phase," shall be
19 deferred for a subsequent trial, and are hereby stayed.

20 4. The stay for the Second Phase shall continue until either 20 days after a jury
21 verdict in the First Phase, or 20 days after a Judgment is entered after a bench trial in the First
22 Phase, whichever occurs first.

23 5. Gary and Alice Smolker will be parties in both the First and Second Phases.

24
25 **ORDERS REGARDING DISCOVERY IN THE FIRST PHASE**

26 6. The parties in the First Phase shall continue with all discovery necessary to the
27 First Phase.

1 7. The parties in the First Phase shall serve all discovery requests and responses
2 upon the all parties, including the Second Phase parties. It is not necessary for the First
3 Phase parties to serve discovery law and motion pleadings upon the Second Phase parties.

4 8. The parties in the Second Phase shall have the right to attend any depositions
5 noticed in the First Phase discovery; however, the Second Phase parties shall not have the
6 right to ask any questions during those depositions.

7 9. There shall be one, consolidated site inspection of the Pacific Villas
8 condominium premises for both Phases. All parties must participate in that site inspection.
9 (or waive their right).

ORDERS REGARDING DISCOVERY IN THE SECOND PHASE

11 10. All discovery for the Second Phase parties is stayed until either 20 days after a
12 jury verdict in the First Phase, or until 20 days after the entry of a Judgment in a bench trial
13 in the First Phase.

14 11. The time periods for responding to any outstanding discovery, or for filing any
15 motions to compel any outstanding discovery for the Second Phase parties, shall be tolled as
16 of December 21, 1999. The tolling shall cease, and the time shall begin to run again, when
17 the stay is lifted as set forth in paragraph 10 of this Order. Each party shall be responsible
18 for keeping track of its own dates, when they are tolled, and when they begin to run again.

19 12. To the extent any Second Phase parties have any discovery motions on file as
20 of December 21, 1999, those motions must be renoticed for a time after the discovery stay is
21 lifted as set forth in paragraph 10 of this Order.

OTHER ORDERS

13. The Court may make other orders to clarify and enforce this bifurcation.

25 14. Counsel for Pacific Villas Homeowners Association shall prepare a Proposed
26 Order and file and serve it on all parties by December 28, 1999. Any oppositions to the
27 Proposed Order shall be filed by January 4, 2000.

1 15. A hearing on the Proposed Order shall be held on January 5, 2000, at 9:00 a.m.
2 in Department 15.

4 DATED: Jan. 5, 2000

Richard L. Fruin, Jr.
RICHARD L. FRUIN

RICHARD L. FRUIN
SUPERIOR COURT JUDGE